

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Shirley Ann Evans

Plaintiffs

v.

**Supermarket Operations, Inc.
d/b/a McComb Market;
Commercial Property 1, LLC;
CPM Associates, L.P. and John
Does 1-10**

Defendant

Civil Action No. 15-048-
PCT

Notice of Removal

5:15cv61DCB-MTP

The Defendant, CPM Associates, L.P. ("CPM"), removes this case to the United States District Court for the Southern District of Mississippi, Western Division, pursuant to 28 U.S.C. §§1332, 1441, and 1446.

I.

The plaintiff filed her Complaint in the Circuit Court of Pike County, Mississippi on or about March 20, 2015. **Exhibit**

A.

II.

In her Complaint, the plaintiff seeks monetary damages from CPM, arising from a slip and fall accident which occurred

on January 1, 2014, wherein the Plaintiff alleges that she slipped and fell as she walked across the parking lot on the premises of the McComb Market located at 1209 Delaware Avenue, McComb, Mississippi.

III.

This case is being removed pursuant to 28 U.S.C. § 1332, which provides that the “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceed the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.”

IV.

The Plaintiff is a resident of Lincoln County, Mississippi.

V.

The Defendant, CPM is a limited partnership organized under the laws of the State of Tennessee with its principal place of business in Chattanooga, Tennessee. **See Exhibit B.**

“For purposes of diversity, the citizenship of a limited liability company and a limited partnership is determined by considering the citizenship of all the members and partners.” *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir.

2008). The member partners of CPM Associates, LP include the following diverse citizens:

Audeline Phillips	2412 Hamill Rd. Hixson, TN 37343
Bright Interests, LP	537 Market Street, Suite 400 Chattanooga, TN 37402
Diane Doll	880 NE 69th Street, Unit 6K Miami, Fl 33138
Donald Barkley	2880 Bakers Farm Road SE Atlanta, Ga 30329
Fletcher Bright Company, Inc.	537 Market Street, Suite 400 Chattanooga, TN 37402
Fletcher Bright Partnership, No. 2	537 Market Street, Suite 400 Chattanooga, TN 37402
Friday's Plaza Associates LTD	537 Market Street, Suite 400 Chattanooga, TN 37402
George Bright	1511 Chickamauga Trail Lookout Mtn, Ga 30750
George N Dickinson III Credit Shelter c/o Sanford B Dickinson, Executor	1535 Stonegate Way Atlanta, Ga 37327
Irrevocable Trust of R Park Ellis	2956 Paces Lake Drive Building 13 Atlanta, Ga 30339
Marital Trust U/A John M Martin c/o SE Martin & CG Martin Co- Trustee	900 Cumberland Road Chattanooga, TN 37409
Mertland Hedges	P O Box 5757 Chattanooga, TN 37405
Michelle Smith	521 Cedar Glen Circle East Ridge, TN 37412
Neil Meyers	5881 Glenridge Drive Suite 220 Atlanta, GA 30328
Patrice Davis	917 Arden Way

	Signal Mtn, TN 37377
Robert Keiter	1827 Powers Ferry Rd Building 13 Atlanta, GA 30339
William O Meyers Family Trust c/o Stephen M Johnson PC	90 Glen Oaks Drive Atlanta, GA 30327

Exhibit C (Affidavit of Julia Henderson).

VI.

In addition to individual members, CPM Associates LP is also comprised of some artificial entities, which will be addressed separately. Membership includes two partnerships, one corporation, and three trusts. The corporate entity is Fletcher Bright Company, Inc. This is a foreign corporation organized under the laws of the state of Tennessee with its principal place of business located at 537 Market Street, Suite 400, Chattanooga, TN 37402. **Exhibit D.**

Bright Interests, LP is a limited partnership. The members include a corporation and an individual. **Exhibit E.** The corporation is Bright Interests, Inc., which is a foreign corporation organized under the laws of the state of Tennessee with its principal place of business located at 537 Market Street, Suite 400, Chattanooga, TN 37402. **Exhibit F.** The

individual member is Fletcher Bright, who is an adult resident citizen of Tennessee. **Exhibit C.**

Fletcher Bright Partnership, LP No. 2 is comprised the following individuals, none of whom are citizens of Mississippi:

Fletcher W. Bright	537 Market Street, Suite 400 Chattanooga, TN 37402
George T. Bright	537 Market Street, Suite 400 Chattanooga, TN 37402
Anne V. Bright	537 Market Street, Suite 400 Chattanooga, TN 37402
Elizabeth Bright Graham	537 Market Street, Suite 400 Chattanooga, TN 37402
Frank S. Bright	537 Market Street, Suite 400 Chattanooga, TN 37402
Ann Bright Monk	537 Market Street, Suite 400 Chattanooga, TN 37402
Lucy Bright Griffin	537 Market Street, Suite 400 Chattanooga, TN 37402

Friday Plaza Associates, LTD is a partnership comprised of two corporations, one partnership, five (5) trusts and two individuals:

Bright Interests, Inc. ¹	537 Market Street, Suite 400 Chattanooga, TN 37402
-------------------------------------	---

¹ Bright Interests, Inc. is a Tennessee corporation with its principal place of business in Chattanooga, TN. **Exhibit F.**

Fletcher Bright Company, Inc. ²	537 Market Street, Suite 400 Chattanooga, TN 37402
Fletcher Bright Partnership No. 2 ³	537 Market Street, Suite 400 Chattanooga, TN 37402
George N Dickinson III Credit Shelter c/o Sanford B Dickinson, Executor	1535 Stonegate Way Atlanta, Ga 37327
George R. Fontaine Trust c/o ELD Associates ⁴	832 Georgia Avenue, Suite 400 Chattanooga, TN 37402
Irrevocable Trust of R Park Ellis	2956 Paces Lake Drive Building 13 Atlanta, Ga 30339
James Brown	537 Market Street, Suite 400 Chattanooga, TN 37402
John T. Fontaine Trust c/o ELD Associates	832 Georgia Avenue, Suite 400 Chattanooga, TN 37402
Robert Keiter	1827 Powers Ferry Rd Building 13 Atlanta, GA 30339
William L. Davenport Trust c/o ELD Associates	832 Georgia Avenue, Suite 400 Chattanooga, TN 37402

The George N Dickinson III Credit Shelter is a trust. It is a member of CPM Associates, LP and Friday Plaza Associates, LTD. The trustee is his spouse, Sandra Dickinson,

² Fletcher Bright Company, Inc. was previously addressed above.
Exhibit D.

³ The citizenship of the members of this partnership were addressed above.

⁴ The trustee of the George R. Fountain Trust, the John T. Fountain Trust, and the William L. Davenport Trust is Thomas Carter Lupton. Neither the trustee nor any of the beneficiaries of these three trusts are citizens of Mississippi.

who is a citizen of Atlanta, GA. None of the beneficiaries of this trust are citizens of Mississippi. **Exhibit C.**

Merrill Ellis is the trustee of the Irrevocable Trust of R. Park Ellis. This trust is also a member of CPM Associates, LP and Friday Plaza Associates, LTD. The trustee is a citizen of Atlanta, GA. None of the beneficiaries of this trust are citizens of Mississippi. **Exhibit C.**

CG Martin Co is the trustee of the Marital Trust U/A John M Martin. The trustee is a citizen of Tennessee. None of the beneficiaries of this trust are citizens of Mississippi. **Exhibit C.**

Stephen M Johnson is the trustee of the William O Meyers Family Trust. The trustee is a citizen of Atlanta, Ga. None of the beneficiaries of this trust are citizens of Mississippi. **Exhibit C.**

VII.

Supermarket Operations, Inc. d/b/a McComb Market, is a foreign cooperation, incorporated under the laws of the State of Louisiana. **See Exhibit G.** As of the date of this notice of removal, no proof of service has been filed with the Circuit Court of Pike County evidencing service of process on this

defendant, and upon information and belief, this defendant has not in fact been served with process. Therefore, there is no requirement that this defendant join in the notice of removal. 28 U.S.C. § 1446(b)(2)(A).⁵

VIII.

Commercial Property 1 is a non-diverse defendant who has been fraudulently joined as a party defendant in this matter for the purposes of defeating diversity jurisdiction. Commercial Property 1 neither owned, occupied, nor had any involvement in the premises where the plaintiff was allegedly injured. Moreover, plaintiff voluntarily agreed to dismiss Commercial Property 1 from this case but has not yet submitted a proposed order or stipulation effectuating the dismissal. Commercial Property was not required to join in the notice of removal because it was improperly joined to this action.

IX.

The Complaint does not specify the amount of damages being sought. The Defendants have been provided with “other paper” that establishes that the amount in controversy exceeds

⁵ “When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A).

\$75,000. 28 USC § 1446(b)(3). Specifically, the Plaintiff has submitted responses to requests for admission on June 4, 2015, admitting that she is seeking damages in excess of \$75,000.

Exhibit H. Therefore, the amount in controversy in this case exceeds the sum or value of \$75,000, exclusive of interest and costs.

X.

A copy of the entire state court record is attached as an exhibit to this Notice of Removal. **Exhibit I.**


XI.

The requirements of 28 U.S.C. §1332 have been met and this Court has subject matter jurisdiction.

XII.

This notice of removal is timely as it is being filed within 30 days after receipt through service or otherwise of the plaintiff's responses to the request for admissions that clarified the amount in controversy.

Respectfully submitted, this the 2 day of July, 2015.


H. Wesley Williams, III
Counsel for CPM Associates, L.P.

H. Wesley Williams, III
MS Bar No. 9320
MARKOW WALKER, PA
Post Office Box 13669
Jackson, MS 39236-3669
Telephone: 601-853-1911
Facsimile: 601-853-8284
E-mail: wwilliams@markowwalker.com

Certificate of Service

I, H. Wesley Williams, III, do hereby certify that I have
this day mailed via United States mail, and electronic mail, a
true and correct copy of the above and foregoing *Notice of
Removal* to:

John Hall, Esq.
Morgan & Morgan
One Jackson Place, Suite 777
188 E. Capitol Street
Jackson, MS 39201
Counsel for Plaintiff

This the 2nd day of July, 2015.


H. Wesley Williams, III